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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

October 13, 2011

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Lori Withrow, Esq.
Southern, Allen & Withrow
Attorneys at Law
Post Office Box 17248
Little Rock, AR 72222

Re: Hallmark National Mortgage Corporation
Stations: KKYK-DT, KKYK-CA, KTVV-LP,
DKHTE-LP, KEJC-LP, and KWBK-LP.
FY 2010 Regulatory Fees
Fee Control No. RROG-10-00013048

Dear Ms. Withrow:

This letter responds to your request dated August 25, 2010 (*Request*),[1] for a waiver of the Fiscal Year (FY) 2010 regulatory fees owed by Hallmark National Mortgage Corporation (*Hallmark*) for Stations KKYK-DT (Camden, AR), KKYK-CA (Little Rock, AR), KTVV-LP (Hot Springs, AR), DKHTE-LP (Little Rock, AR), KEJC-LP (Sheridan, AR), and KWBK-LP (Pine Buff, AR) (collectively, Stations) on the grounds of financial hardship. Our records reveal that *Hallmark* did not pay the FY 2010 regulatory fees, which total [redacted], but your *Request* did petition to defer payment. For the reasons discussed, below, your *Request* is denied.

You provided *Hallmark's* Profit & Loss Statement for the period August 2009 through June 2010 (*Profit & Loss*) and a Declaration from Eugene Maris, Hallmark's President (*Maris Declaration*). You assert that the Stations "were licensed to a bankrupt entity on October 1, 2009, were purchased by Hallmark from the bankrupt estate [Equity Media Holdings Corporation and Arkansas 49, Inc.], and have had a negative cash flow since being purchased."[2] Further, you assert that the "Commission has repeatedly allowed that bankruptcy is sufficient to establish financial hardship and that it will waive the regulatory fees for a bankrupt entity." The *Maris Declaration* asserts *Hallmark* is not engaged in any other business that generates revenues or expenses not reflected on the *Profit and Loss*, that payments to members, officers or directors, and the like are not included in expenses, and that the projected cash flow "for all of 2010 will be negative." This limited information does not present a compelling case of financial hardship to waive the FY 2010 regulatory fees.

[1] Letter from Lori Withrow, Southern, Allen & Withrow, 12410 Cantrell, Suite 100, Little Rock, AR 72223 to Federal Communications Commission, Office of the Managing Director (Aug. 25, 2010) (*Request*).
[2] *Id.* at 1.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.[3] The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.[4] Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.[5] "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."[6] In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.[7] Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Where relevant, the fact that the licensee is in bankruptcy is evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its standard. Thus, we review each request, including those in which bankruptcy is asserted, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee, and we may decline such a request.[8] We note in this instance, *Hallmark* is not in bankruptcy.

Hallmark does not present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. First, the *Profit and Loss* does not provide the range of financial information required to fully document its financial position and show how payment of the FY 2010 regulatory fees will adversely impact *Hallmark's* ability to serve the public. Instead of that single document, *Hallmark* should have provided additional relevant information for 2009, 2010, and later, to include a balance sheet, cash flow projection for the next twelve months (with an explanation of how calculated), a list of the partners and/or corporate officers and their individual compensation, together with a list of the entity's highest paid employees, other than officers, and the amount of their compensation, and similar

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[3] 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).
[4] 9 FCC Rcd at 5344 ¶ 29.
[5] 10 FCC Rcd at 12761-62 ¶ 13.
[6] *Id.*
[7] *Id.*
[8] In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

information.[9] Moreover, Hallmark did not explain any of the entries on the *Profit and Loss*, *e.g.*, the relevance of the income and expenses before it acquired the Stations on October 30, 2009. *Hallmark* explained the Stations were acquired from a prior licensee that was in bankruptcy, but *Hallmark* did not explain its financial arrangements with the Bank of Little Rock, which was the primary creditor to the prior licensee and named as "Buyer" with *Hallmark*.[10] Finally, Hallmark did not disclose the amount, if any, it paid to obtain the licenses or the amount it will have after it consummates the sale of station KKYK-CA to Pinnacle Media, LLC for $250,000.[11] The details of both transactions are relevant to our determination.

Payment of [redacted] for the FY 2010 regulatory fees is now due. That regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If the licensee fails to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fee,[12] and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,[13] the Commission will initiate collection proceedings.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

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[9] We will not speculate as to *Hallmark's* business activities, the content of its balance sheet, and the content of its cash flow.
[10] *Hallmark* is 100% owned by Bank of Little Rock, which, in turn, is 100% owned by Little Rock Bankshares, Inc. *See* FCC Form 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License, File No. BALCDT-20090720ACI (Aug. 5, 2009) (As defined in the Asset Purchase Agreement, the named Buyer of Station KKYK was the Bank of Little Rock and *Hallmark*. The reported consideration for the sale was $1.00 and cancellation of Seller's secured indebtedness to Bank of Little Rock.).
[11] The petitioner has the burden of clarifying its position before the Commission. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997). *See* FCC Form 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License, File No. BALTTA-20100802AZR (Jul. 30, 2010) (The terms of the Asset Purchase Agreement provided for payment to *Hallmark* of [redacted] cash and a [redacted] promissory note.). There is no evidence that *Hallmark* encountered any difficulty in negotiating the sale of the station less than a year after it was acquired.
[12] 47 U.S.C. § 159(c)(1). *See* 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").
[13] *See* 47 C.F.R. § 1.1901, *et seq.*